

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 21-CR-018-WMC

KELLY HARPER,

Madison, Wisconsin

June 24, 2021

Defendant.

2:20 p.m.

* * * * *

STENOGRAPHIC TRANSCRIPT OF PLEA HEARING
HELD BEFORE THE HONORABLE WILLIAM M. CONLEY

APPEARANCES:

For the Plaintiff:

Office of the United States Attorney
BY: CHADWICK M. ELGERSMA
Assistant United States Attorney
222 West Washington Avenue, Suite 700
Madison, Wisconsin 53703

For the Defendant:

Federal Defender Services of Wisconsin, Inc.
BY: JOSEPH A. BUGNI
Madison Branch Office
22 East Mifflin Street, Suite 1000
Madison, Wisconsin 53703

Also Present:

Kelly Harper, Defendant

CHERYL A. SEEMAN, RMR, CRR
Official Court Reporter
United States District Court
120 North Henry Street, Room 410
Madison, Wisconsin 53703
1-608-261-5708

1 (Called to order 2:20 p.m.)

2 THE CLERK: Case No. 21-CR-18, *United States of*
3 *America v. Kelly Harper*, called for a plea hearing. May
4 we have the appearances, please?

5 MR. ELGERSMA: Good afternoon, Your Honor. Chad
6 Elgersma for the United States.

7 MR. BUGNI: Good afternoon, Your Honor. Joe
8 Bugni appearing on behalf of Ms. Harper.

9 THE COURT: Good afternoon all. We are here for
10 a plea hearing based on a written plea agreement signed by
11 the defendant on June 9th and previously provided to the
12 Court. At the outset, I note it does not appear that it
13 has been put on the record that the government has an
14 obligation, under Rule 5(f) of the Federal Rules of
15 Criminal Procedure, to disclose all potential exculpatory
16 evidence consistent with *Brady v. Maryland* and its progeny
17 and that failure to do so timely may result in sanctions,
18 although my understanding is, Mr. Elgersma, that the
19 government is not only aware of its obligation, but
20 believes it has fulfilled it in this case.

21 MR. ELGERSMA: That's correct, Your Honor.

22 THE COURT: And, Mr. Bugni, my understanding is,
23 as defense counsel, you have no reason to doubt that that
24 obligation has been satisfied.

25 MR. BUGNI: That's correct, Your Honor.

1 THE COURT: All right. And with that as
2 preliminary then, I'll just confirm with you, Mr. Bugni,
3 that you and your client have received a copy of the
4 one-count indictment and ask whether you wish it read
5 aloud or waive reading.

6 MR. BUGNI: We have received it and we waive
7 reading, Your Honor.

8 THE COURT: And, Mr. Elgersma, would you please
9 state the maximum and any applicable minimum penalties
10 that may apply should the defendant be found guilty in the
11 one-count indictment?

12 MR. ELGERSMA: The defendant has been charged
13 with one count of violating Title 18, United States Code,
14 Section 1958(a), which carries maximum penalties of ten
15 years in prison, a \$250,000 fine, a three-year period of
16 supervised release, and a mandatory \$100 special
17 assessment.

18 THE COURT: Mr. Bugni, have you had sufficient
19 time to talk with your client about these possible
20 penalties, as well as the charges against her, and any
21 defenses that she may have to the charges?

22 MR. BUGNI: I have, Your Honor.

23 THE COURT: Ms. Harper, then it's my
24 understanding that you do wish to enter a plea today. Is
25 that correct?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Before accepting your plea, it's my
3 obligation to ensure that you're acting freely and
4 voluntarily, with an understanding of both the charge
5 against you and the consequences of a plea of guilty, and
6 then further to assure that there's a factual basis for
7 your plea. To do those things, I'll need to ask you a
8 series of questions under oath. So I would ask that you
9 stand at this time and sworn by our clerk.

10 **KELLY HARPER, DEFENDANT, SWORN**

11 THE COURT: My first few questions just go to
12 ensuring that you're capable and ready to proceed today.
13 Can you tell me how old you are and how far you progressed
14 in terms of formal education?

15 THE DEFENDANT: I'm 38 years old and I have a
16 college degree.

17 THE COURT: And what is your degree in?

18 THE DEFENDANT: Public health administration.

19 THE COURT: And where did you earn that?

20 THE DEFENDANT: University of Arizona.

21 THE COURT: And were you certified in any way
22 following a graduation?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: And haven't earned any qualifications
25 or certifications on the job?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Okay. Is there any reason why you
3 would have trouble understanding the proceedings today in
4 particular, whether because of an illness, whether because
5 you're under the influence of a prescription medication or
6 illicit drug or alcohol, overly tired, any reason at all
7 that you would have trouble understanding the proceedings
8 today?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Then the last preliminary question:
11 I just want to assure that at this point you've had enough
12 time to talk with your counsel, Mr. Bugni, about the
13 charge against you, the facts the government believes it
14 could prove, the statutory penalties that may apply, and
15 the Federal Sentencing Guidelines and how those guidelines
16 could impact your sentence. Have you had a chance to talk
17 about all of those things sufficiently with your counsel?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. Then I'm going to begin
20 with the charge against you. And I'll simply ask you that
21 you tell me, in your own words, what you understand you're
22 being formally charged with doing in the one-count
23 indictment, so what is your understanding of that charge.
24 And there's no magic words. I just want to make sure you
25 have a general understanding of what you're being charged

1 with.

2 THE DEFENDANT: Oh, being charged with going on
3 the dark web for soliciting murder-for-hire.

4 THE COURT: And that's essentially right. The
5 charge is that from about October 19, 2020, through
6 December 10th of that same year, that you knowingly used
7 the internet with an intent to arrange a murder of a known
8 victim, in violation of the law, using consideration of
9 payment, specifically bitcoin. You understand that's the
10 essential charge against you?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And do you also understand that if I
13 were to accept your plea and adjudge you guilty that you
14 could be subject to maximum penalties of ten years in
15 prison, a \$250,000 fine, three-year period of supervised
16 release and a hundred dollar special assessment, as was
17 just reviewed by the assistant U.S. attorney?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. In addition, if you were
20 to violate the terms and conditions of any period of
21 supervised release, do you understand you could be subject
22 to further penalties, up to and including additional time
23 in prison?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Then I'm going to turn just briefly

1 to the Federal Sentencing Guidelines. I'm sure Mr. Bugni
2 explained the probation office has the first obligation to
3 calculate the guideline range. They'll do that by looking
4 at the number of points attributable to your offense under
5 the guidelines as well as any relevant conduct related to
6 your crime, including any communications that you used as
7 well as the amount that was involved. They would give you
8 credit for acceptance of responsibility, assuming there's
9 no reason to deny you that credit under the guidelines.
10 They would consider your role in this offense, your
11 limited prior criminal record, and other factors that that
12 office deems relevant.

13 The probation office then issues a presentence report
14 that you and your counsel and the government's counsel can
15 object to. And it becomes my obligation to rule on those
16 objections and then to decide what the guideline range is
17 for purposes of sentencing. Do you understand that will
18 be the process?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: While that will be the process, do
21 you also understand that I am not bound to sentence you
22 within the guideline range? I could give you a lower
23 sentence below that range or a higher sentence up to ten
24 years in prison if I believe it better serves the purposes
25 of sentencing.

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: You are waiving a number of valuable
3 constitutional rights by pleading guilty. They're set
4 forth at paragraph 2 of the plea agreement and I'm
5 confident that Mr. Bugni has gone through them with you in
6 detail. I'll just confirm on the record the basic rights
7 you're giving up, beginning with the most fundamental
8 right you have, which is to maintain a plea of not guilty
9 and go forward to a jury trial. Do you have a general
10 understanding as to what a jury trial would have involved?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: What's your general understanding?

13 THE DEFENDANT: That there are 12 jurors and that
14 they can find you either guilty or not guilty.

15 THE COURT: And that's essentially right. Those
16 12 people will be selected by you and your counsel, the
17 government's counsel and me, if we went forward to a
18 trial. They would come from -- be selected from a larger
19 group of people taken at random from the presidential
20 voting rolls in the Western District of Wisconsin.

21 Once selected, the government would carry the burden
22 of proof throughout. You could challenge any evidence
23 provided by the government through cross-examination by
24 your counsel or otherwise under the rules of evidence.
25 You could also put on a defense if you chose to, although

1 you're not required to. You could subpoena witnesses to
2 testify and present other evidence through your counsel.
3 You could even take the stand in your defense, although
4 you could never be required to testify in a criminal case
5 against you.

6 And then ultimately, as you said, whatever evidence
7 is admitted the jury would take back into a separate room
8 and privately deliberate. Only if all 12 members of the
9 jury agreed that the government had proven your guilt
10 beyond a reasonable doubt could you be adjudged guilty.
11 Do you understand that those are the rights you waive when
12 you waive the right to a jury trial?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: By pleading guilty today, do you also
15 understand that you'll be waiving your right against
16 self-incrimination as well as your right to require the
17 government to prove every element of the charge against
18 you?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: By pleading to a felony offense
21 today, do you understand that you may also be forfeiting
22 other rights, including the right to vote, the right to
23 hold public office, the right to serve on a jury yourself,
24 as well as the right not only to own, but even to possess
25 a firearm?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And finally, do you understand that
3 you have a right to court-appointed counsel, at government
4 expense if necessary, throughout these proceedings,
5 whether you plead not guilty again and go forward to trial
6 or plead guilty and go forward to sentencing?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And at this time I'm going to ask the
9 assistant U.S. attorney to summarize the basic terms of
10 your written plea agreement. And I'd ask that you listen
11 closely to the summary, because I will ask your counsel
12 and you afterwards whether the summary is consistent with
13 your understanding of the basic terms of the written plea
14 agreement.

15 Mr. Elgersma, if you would.

16 MR. ELGERSMA: Thank you, Your Honor. The
17 complete understanding of the parties is set forth in the
18 signed three-page plea agreement which the government
19 e-filed with the Court.

20 But in summary, paragraph 1 sets forth the
21 defendant's agreement to plead guilty to the one-count
22 indictment in this case. It also sets forth the maximum
23 penalties for those offenses.

24 In paragraph 2 the defendant acknowledges she is
25 giving up certain rights by pleading guilty which the

1 Court previously reviewed with the defendant.

2 In paragraph 3 the defendant acknowledges her
3 understanding that the plea could have immigration-related
4 consequences if she is not a U.S. citizen, including
5 removal from the United States.

6 In paragraph 4 the parties agree, pursuant to Federal
7 Rule of Criminal Procedure 11(c)(1)(C), and an assessment
8 of the factors set forth in 18 U.S.C. 3553, that a
9 sentence of 72 months is an appropriate disposition in
10 this case. If the Court accepts the plea, the Court will
11 be bound to sentence the defendant to 72 months in prison.
12 If the Court rejects the plea, the defendant may withdraw
13 her plea.

14 In paragraph 5 the parties agree to recommend that
15 the defendant be housed in a federal correctional facility
16 near her children. The defendant understands that the
17 Bureau of Prisons is ultimately responsible for making the
18 final decision regarding her placement.

19 In paragraph 6 the United States agrees this guilty
20 plea will completely resolve all possible federal criminal
21 violations that have occurred in the Western District of
22 Wisconsin.

23 In paragraph 7 the defendant agrees to provide a full
24 and truthful accounting of her finances.

25 In paragraph 8 the United States reserves the right

1 to make arguments in support of or in opposition to the
2 sentence imposed by the Court.

3 In paragraph 9 the defendant acknowledges her
4 understanding of the terms of the plea agreement.

5 Finally, in paragraph 10, the defendant acknowledges
6 that the plea agreement dated April 29, 2021, is
7 rescinded.

8 THE COURT: Mr. Bugni, is the summary just
9 provided by the assistant U.S. attorney consistent with
10 your understanding of the basic terms of the written plea
11 agreement that will control in this case?

12 MR. BUGNI: It is, Your Honor.

13 THE COURT: Ms. Harper, is it also consistent
14 with your understanding?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Has anyone made you any other promise
17 than contained in the written plea agreement itself in
18 order to get you to plead guilty today?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Has anyone threatened or forced you
21 to plead guilty?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Has anyone told you that by pleading
24 guilty today, you're going to get a particular sentence
25 from this Court other than the agreed upon 72 months,

1 which I would either accept or not accept, and then you
2 could withdraw your plea if I didn't accept it? Other
3 than that statement, has anyone told you that you're going
4 to get a particular sentence from this Court other than
5 between probation and ten years?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: As you sit here today, except for
8 that statement, do you have reason to think that you know
9 what your actual sentence is going to be?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: That's because of the way I asked the
12 question. Because this is a binding agreement, you do
13 have reason to think 72 months. But do you understand
14 that I'm not bound by that agreement --

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: -- and that you could get a different
17 sentence ultimately in this case?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. And do you understand
20 that once you enter a plea of guilty, if I were to accept
21 the binding 72-month sentence, that you would not be free
22 to withdraw your plea?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: I should have asked, too, if any --
25 if a victim or victim representatives are present, whether

1 they've been notified of this agreement.

2 MR. ELGERSMA: Yes, Your Honor, they have been
3 notified.

4 THE COURT: And to your knowledge have not
5 objected in any way?

6 MR. ELGERSMA: No, Your Honor, they have not.

7 THE COURT: All right. Then at this time I'm
8 going to ask the assistant U.S. attorney to do one final
9 thing and that is to summarize the basic facts the
10 government believes it could have proven had this matter
11 gone forward to trial. Again I'd ask you to listen
12 closely, because at the end of it, I'm going to ask you if
13 there's anything that's stated that you believe the
14 government could not prove.

15 Mr. Elgersma.

16 MR. ELGERSMA: Had this case gone to trial,
17 testimony would have shown that in 2020, a group of
18 international journalists were investigating
19 murder-for-hire sites on the dark web. The journalists
20 developed a technical source that allowed them to monitor
21 chat conversations taking place on at least one of these
22 murder-for-hire sites.

23 From December 3rd through December 10th, 2020, the
24 journalists monitored a conversation between the
25 administrator of the murder-for-hire site and someone with

1 a user name Malik8, spelled M-A-L-I-K, the number 8. All
2 of these chats related to Malik8 paying bitcoin to the
3 site administrator as compensation for the administrator
4 killing known victim, or hereinafter KV.

5 More specifically, Malik8 sent the site administrator
6 KV's personal identifiable information; a picture of KV, a
7 picture of KV's vehicle, including the license plate;
8 information about where KV worked and KV's phone number.
9 Malik8 told the administrator, quote, "The target needs to
10 be killed."

11 When asked by the site administrator about proof of
12 payments, Malik8 sent a screen capture or a picture of a
13 bitcoin wallet showing a bitcoin balance valued at
14 \$5,633.87. Malik8 told the administrator she was
15 reluctant to transfer any bitcoin until, quote, "the job
16 was done." Malik8 explained that she already paid a
17 different murder-for-hire site to kill KV, but she was
18 scammed out of the bitcoin. Malik8 included a screen
19 capture from the first murder-for-hire site showing her
20 bitcoin payment.

21 The journalists brought this information to KV's
22 attention. They also provided KV with a Word document
23 containing the chat messages and pictures previously
24 discussed. This information was eventually turned over to
25 the Sun Prairie Police Department and the Federal Bureau

1 of Investigation.

2 The FBI reviewed the documentation provided by the
3 journalists, including Malik8's bitcoin transfer to the
4 first murder-for-hire website. Using open-source
5 databases, bank records and subpoenaed IP information, the
6 FBI determined that the defendant made this transfer on or
7 about October 19th, 2020, from her residence located in
8 Columbus, Wisconsin.

9 On February 5th, 2021, FBI agents executed a search
10 warrant at the defendant's house and found a picture on
11 her computer from an MS-13 murder-for-hire dark web site
12 as well as one of the pictures Malik8 sent to the
13 murder-for-hire site administrator. Agents also found
14 bank records with the onion address, or the website
15 address, of a murder-for-hire site written on the back.

16 As agents executed the search warrant at the
17 defendant's residence, law enforcement interviewed the
18 defendant. During this interview, the defendant admitted
19 to paying bitcoin to the administrator of a
20 murder-for-hire dark web site in order to have KV killed.

21 Finally, Your Honor, I'd ask that the Court take
22 judicial notice that Columbus, Wisconsin is in the Western
23 District of Wisconsin.

24 THE COURT: Counsel, it perhaps was intentional,
25 but if you mentioned it, I didn't hear what the original

1 payment or transfer was on October 19.

2 MR. ELGERSMA: That was not included, Your Honor.

3 THE COURT: All right. Mr. Bugni, from what you
4 know about the record in this case, is there anything just
5 reviewed by the assistant U.S. attorney that you believe
6 the government could not prove at trial?

7 MR. BUGNI: No, Your Honor.

8 THE COURT: Ms. Harper, is there anything that
9 you think the government could not prove?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Then I would just ask you to tell me,
12 in your own words, what it is you did, what it is that
13 you're proposing to plead guilty to.

14 THE DEFENDANT: Okay. I was going through a
15 tumultuous custody battle with KV. He had abused our
16 children emotionally and physically for many years. I
17 reported it to police, guardian ad litem [verbatim];
18 there had been many court cases, CPS reports; and no one
19 would listen or do anything to stop the abuse and help my
20 children. It was my divine right, as a mother, to protect
21 my children and help them from suffering. I was desperate
22 and in a very dark place, went on the dark web to find
23 someone to kill KV. I am deeply and sincerely sorry for
24 my action.

25 THE COURT: And just so we're clear for purposes

1 of your plea today, it's correct that you did use this
2 name "Malik8" to go onto a murder-for-hire site and seek
3 the administrator of the site to agree to kill what we're
4 calling "KV" in exchange for a bitcoin payment of roughly
5 over \$5,000? Am I accurately stating the basic facts?

6 MR. BUGNI: Can I have one second?

7 THE COURT: If you have any confusion -- why
8 don't we break it down. First of all, is it correct that
9 you were Malik8 on the murder-for-hire site?

10 THE DEFENDANT: Yes, Your Honor, that's correct.

11 THE COURT: Okay. And is it also correct that
12 you were seeking on that site to have KV killed?

13 THE DEFENDANT: Yes, Your Honor, that's correct.

14 THE COURT: And that as proof of your willingness
15 to pay for that killing that you provided a screenshot of
16 your bitcoin wallet containing a little over \$5,000?

17 THE DEFENDANT: The \$5,000 is not correct, but
18 the bitcoin wallet is correct.

19 THE COURT: And perhaps I had the number wrong.

20 MR. ELGERSMA: Your Honor, I can provide some
21 clarification on that.

22 THE COURT: Sure.

23 MR. ELGERSMA: The first payment, so the payment
24 that actually went through, was valued at approximately at
25 the time -- so bitcoin fluctuates -- at the time was

1 approximately \$1,438.45.

2 THE COURT: All right. And the second -- and the
3 amount shown on the screen caption of the bitcoin wallet
4 in the second transaction was what?

5 MR. ELGERSMA: \$5,633.87.

6 THE COURT: All right. And it may be that --

7 THE DEFENDANT: There was no second transaction
8 though.

9 THE COURT: Oh, I see what you're saying. All
10 I'm asking is did you provide a screenshot, in your
11 discussions on the possibility of paying for the murder, a
12 screenshot of money in your bitcoin account?

13 THE DEFENDANT: Yes, Your Honor, I provided a
14 screenshot with the amount.

15 THE COURT: You hadn't agreed on the amount at
16 that point?

17 THE DEFENDANT: Correct, Your Honor.

18 THE COURT: Okay. But it was your intent to
19 negotiate the killing of KV?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Any further allocution that the
22 government believes is necessary before I ask for a plea?

23 MR. ELGERSMA: No, Your Honor.

24 THE COURT: Any reason why I should not ask for a
25 plea from your client at this time, Mr. Bugni?

1 MR. BUGNI: No, Your Honor.

2 THE COURT: Then I will ask, Ms. Harper,
3 formally, how do you plead to the one-count indictment?

4 THE DEFENDANT: I plead guilty, Your Honor.

5 THE COURT: Based on my discussion with you
6 today, as well as with your counsel and the record in the
7 case as a whole, I am satisfied that you have entered a
8 plea of guilty knowingly and voluntarily after adequate
9 opportunity to consult with counsel and that you have an
10 understanding of both the nature of the charge as well as
11 the consequences of a plea of guilty. I am also satisfied
12 that there is a factual basis for your plea. And
13 accordingly, I do find and adjudge you guilty of the
14 one-count indictment and I accept the plea agreement
15 conditionally pending review of the presentence report.

16 That report will be due on August 12th, with
17 objections due August 26th and sentencing to proceed on
18 September 30th, 2021, at 1 p.m. I believe those are dates
19 already agreed on by the parties, but I'll hear first from
20 the government if there's anything more.

21 MR. ELGERSMA: Nothing, Your Honor.

22 THE COURT: Anything more for the defense?

23 MR. BUGNI: No, Your Honor.

24 THE COURT: Ms. Harper, you've been ably
25 represented by Mr. Bugni and he'll advise you as to

1 cooperating in preparation of the presentence report. I
2 urge you to follow his advice, because it's his job to
3 look out for your interests. On the other hand, I begin
4 thinking about a sentence, and in this case the
5 appropriateness of the binding sentence, based on that
6 presentence report. To the extent you agree to, I would
7 encourage your cooperation.

8 I will consider any other information I'm provided as
9 long as I get it at least two days before sentencing. As
10 Mr. Bugni knows, the sooner I get it, the more it can be
11 vetted and therefore the more confidence I can have in it
12 for sentencing. And I will see both parties on September
13 30th for sentencing.

14 THE DEFENDANT: Thank you, Your Honor.

15 (Adjourned at 2:44 p.m.)

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1 I, CHERYL A. SEEMAN, Certified Realtime and Merit
2 Reporter, in and for the State of Wisconsin, certify that
3 the foregoing is a true and accurate record of the
4 proceedings held on the 24th day of June, 2021, before
5 the Honorable William M. Conley, of the Western District
6 of Wisconsin, in my presence and reduced to writing in
7 accordance with my stenographic notes made at said time
8 and place.

9 Dated this 8th day of August, 2022.

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14
15 _____ /s/

16 Cheryl A. Seeman, RMR, CRR
17 Federal Court Reporter
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